STATE OF MICHIGAN

COURT OF APPEALS

GAY D. SABBATH and KERI S. SABBATH,

Petitioners-Appellants,

v

CITY OF EASTPOINTE,

Respondent-Appellee.

UNPUBLISHED
April 29, 2014

No. 313337
Michigan Tax Tribunal
LC No. 00-433874

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Petitioners appeal by right the decision of the Michigan Tax Tribunal to deny revaluation of petitioners' property, which petitioners contended had been assessed as being worth almost twice its real value. The Tax Tribunal concluded that petitioners had failed to meet their burden of proving that their residence was improperly over-assessed. We affirm.

Because no fraud is alleged, "we review the tribunal's decision for misapplication of the law or adopting of a wrong principle," and the Tax Tribunal's "factual findings are conclusive if they are supported by competent, substantial, and material evidence on the whole record." *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 691; 840 NW2d 168 (2013). "Substantial evidence" may be less than preponderance, but it must more than a scintilla and be reasonably sufficient for to support the conclusion. *Id*. at 691-692.

"True cash value" is essentially the fair market value of a property and the selling price likely to result in an arms-length transaction between a willing buyer and a willing seller. *Id*. at 696. Petitioners have the burden before the Tax Tribunal of proving the true cash value of their property, but because Tax Tribunal proceedings are de novo, the Tax Tribunal is obligated to "make its own, independent determination of true cash value." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The Tax Tribunal is, therefore, precluded from relying on any presumptions of validity as a standard of review. *County of Wayne v Michigan State Tax Comm*, 261 Mich App 174, 189; 682 NW2d 100 (2004).

On appeal, this Court's review is not de novo; we must accept the Tax Tribunal's factual findings if "competent, material, and substantial evidence on the record" supports them. *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012). The

appellant—in this case, petitioners—had the burden of proof on appeal. *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005).

Our review is hampered to some extent by the fact that the record strongly but inconclusively suggests that a hearing was held below, despite petitioners' statement to this Court that no hearing took place. The Tax Tribunal's Proposed Opinion and Judgment makes references to testimony and other evidence not otherwise found in the record. Furthermore, there is some indication that petitioners made arguments to the Tax Tribunal that are likewise not evidenced in the record. The register of actions indicates that a hearing was "set" but, curiously, does not have a specific entry stating that that hearing was either "held" or cancelled. Both parties make references to a hearing as if there had, in fact, been one. If there was a hearing, petitioners would not only be in violation of MCR 7.210(B) for failing to provide a transcript of it, but would also have been dishonest with this Court. Furthermore, while pro se prisoners are held to "less stringent standards than formal pleadings drafted by lawyers" because of their right of access to the courts, but pro se civil litigants are not so entitled, and they are particularly not excused from compliance with applicable court rules. *Haines v Kerner*, 404 US 519, 520; 92 S Ct 594; 30 L Ed 2d 652 (1972); *People v Herrera*, 204 Mich App 333, 338-339; 514 NW2d 543 (1994). Nonetheless, we cannot resolve with certainty whether there had actually been a hearing.

Petitioners' argument, while difficult to decipher, appears to be essentially that the Tax Tribunal improperly rejected petitioners' evidence and improperly presumed that respondent's initial valuation was correct simply because petitioners failed to make a persuasive case to the contrary. The former is irrelevant to us: as noted, our factual review is to determine whether the Tax Tribunal's decision had sufficient factual support, not whether better evidence could have supported a different decision. Furthermore, petitioners have the burden to show that the Tax Tribunal's decision was not adequately supported, and the only evidence from petitioners that we can find in the record is several Multiple Listing Service sheets without further commentary. Apparently, petitioners submitted other evidence, but it is not found in the record. Thus, it is conceivable that if a hearing was held and had we been provided with a transcript, we might arrive at a different conclusions. Nonetheless, we find no support for petitioners' contention that the Tax Tribunal improperly failed to consider any of their evidence.

Petitioners also contend that the Tax Tribunal's emphasis on their lack of legal documents imposes an unreasonable burden. We disagree. It would in fact be simple enough to go to their local Register of Deeds, which may even have records available online. Any nominal fee for copies or the time and effort involved in a telephone call or physical journey to the office is not an unreasonable burden. Petitioners' contention that they provided testimony as to adjustments between their property and their comparable properties is contradicted by the statement in the proposed opinion that petitioners did not, and petitioners have provided no evidence to the contrary. In short, petitioners' objections to the Tax Tribunal's rejection of their evidence are not clearly meritorious.

In contrast, the record shows that respondent submitted actual evidence listing the similarities and differences between petitioners' property and three comparables, with dollar values placed on those differences, to show why petitioners' property was valued similarly after those adjustments. Petitioners' only real attack on respondent's evidence is to point out that one of the comparable properties is more than a mile from their residence, but aside from a reference

to "basic appraisal practices," petitioners offer no reason why the distance matters. Petitioners also argue that respondents' comparables required numerous adjustments, but while petitioners' contention that adjustments lead to a loss of accuracy is reasonable enough, they do not offer any indication that the need for the adjustments made respondent's comparable properties not actually comparable. Petitioners have simply not established that the evidence upon which the Tax Tribunal relied was insubstantial.

Nonetheless, if the Tax Tribunal had, in fact, presumed that respondent's valuation was correct merely because petitioners failed to make a persuasive case to the contrary, that would be a blatant misapplication of the law and adoption of a wrong legal principle, no matter what the other merits of this matter might be. The Tax Tribunal's reasoning, in whole, appears to consist of a single paragraph as follows:

> The following authority and reasoned opinion supports the Tribunal's determination that the Petitioner has failed to meet the burden of proof. Petitioner's evidence of value consisted of MLS sales information which on its face reflects either implied or stated forced sale circumstances to a large extent. The Petitioner did not include any verification of the actual terms on any transaction as no legal documents were included as evidence. Finally, the Petitioner made no adjustments for differences between the subject and the comparable properties he identified in his efforts to establish valuation. The Respondent's sale comparison approach evidence included one comparable on the same street and two others of very similar size. All of Respondent's comparables include adjustments for significant differences with the subject. Respondent sales comparison evidence confirms the cost less depreciation approach valuation determination of the BOR [Board of Review]. The Tribunal concludes the best evidence of value is to be found in the Respondent's evidence which confirms the BOR valuation by two different methods, both the cost less depreciation approach and the sales comparison approach. The foregoing is entirely consistent with the legal standards identified on page two [presumably of the proposed opinion, which does discuss the applicable law].

Consequently, it is clear that the Tax Tribunal did *not* merely presume that the Board of Review properly valued the property; rather, the Tax Tribunal explicitly considered the approaches presented by both parties and arrived at the reasoned conclusion that respondent's approach confirmed the Board of Review. The Tax Tribunal did not misapply the law or adopt a wrong principle of law at least insofar as it was required to engage in an independent, de novo review.

Petitioners have not established that the Tax Tribunal misapplied the law, adopted a wrong principle of law, or arrived at a conclusion unsupported by competent, substantial, and material evidence on the whole record. Affirmed.

/s/ Amy Ronayne Krause
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck